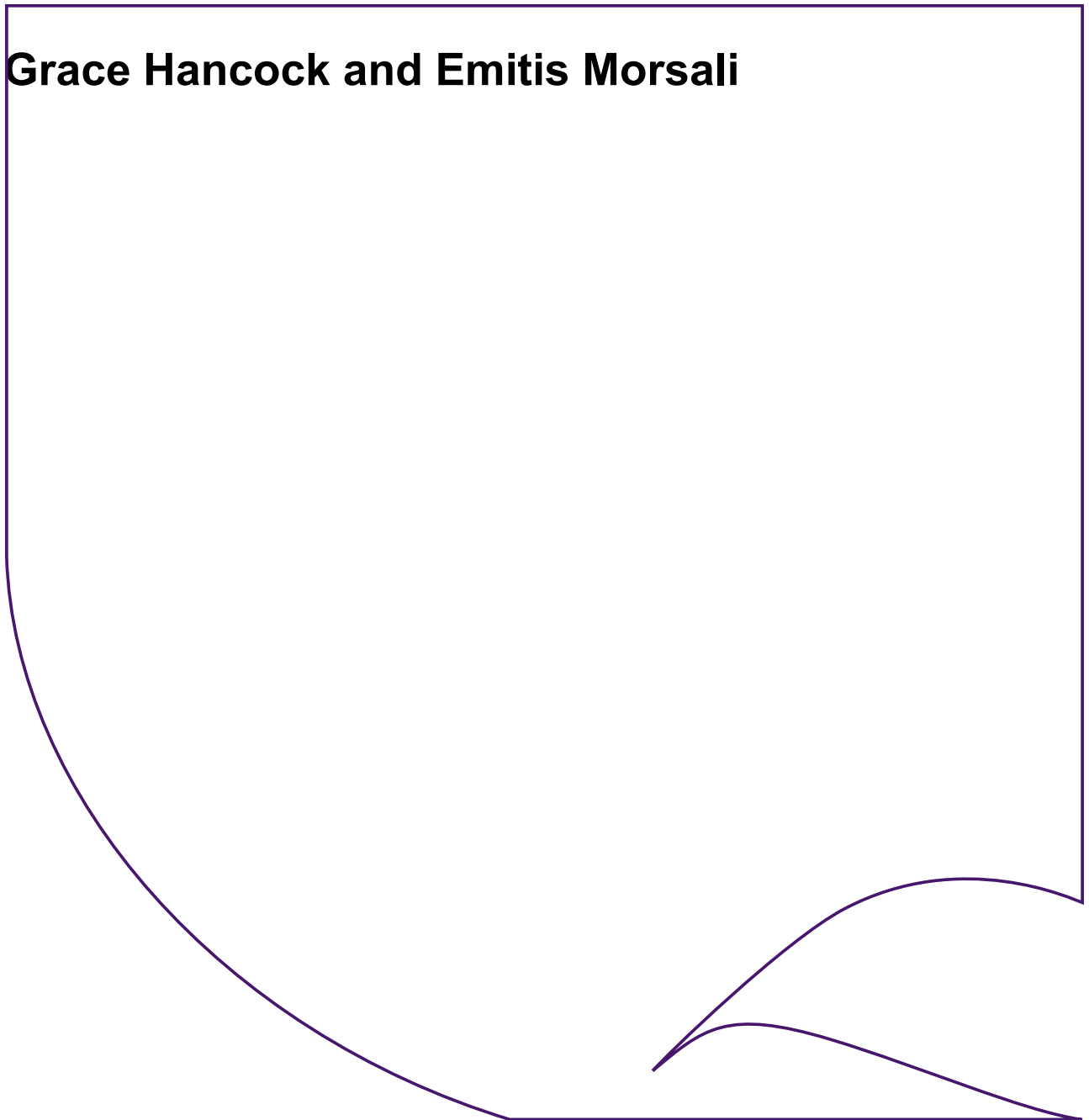


MOTORISED WHEELCHAIR REGISTRATION IN QUEENSLAND

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About the Authors

This report was researched and authored by UQ law students **Grace Hancock and Emitis Morsali**. It was prepared for and on behalf of Queensland Advocacy for Inclusion, an independent advocacy organisation advocating for the protection and advancement of the needs, rights, and lives of people living with disability in Queensland. Student researchers undertook this task on a *pro bono* basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession.

The UQ Pro Bono Centre and student researchers thank Queensland Advocacy Incorporated for allowing us to contribute to its vital work.

About this Document

This document was prepared with the intention of providing research and information in order to construct a letter addressed to the Queensland Department of Transport.



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1. Executive Summary

The issue was brought to the Pro Bono Centre's attention by Queensland Advocacy for Inclusion following increased complaints regarding the registration of motorised wheelchairs in Queensland. In particular, the complaints stemmed from the State's stringent weight requirements. These requirements have prohibited wheelchairs which exceed the set weight limit from being registered. As a result, these wheelchairs are not eligible for insurance, placing excessive financial burdens on patrons. The research group's task was to conduct research in order to make informed recommendations on possible reforms to the registration process for motorised wheelchairs in Queensland. In undertaking this task, the group examined Queensland's current legislation and policies, and that of other jurisdictions. The group found that Queensland has the most stringent registration process in Australia. This is illustrated by the fact that states such as New South Wales and Victoria do not require registration at all. Additionally, while registration is necessary in all other jurisdictions, exemptions are provided for motorised wheelchairs which do not exceed a speed of 10km/h. It is thus clear that the position in Queensland greatly differs from other jurisdictions. The group compiled various recommendations following these findings.

2. Methodology

The research group's objective was to investigate and summarise the current regulation of motorised wheelchairs in all Australian jurisdictions. The group researched legislation and associated regulations to determine the current situation in each jurisdiction. This is outlined below.

3. Registration of Motorised Wheelchairs in Australian Jurisdictions

3.1 Queensland

The legislation in Queensland governing the registration of vehicles (which could include motorised wheelchairs) is the *Transport Operations (Road Use Management) Act 1995* (Qld) ('the Act') and the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021* (Qld) ('the Regulations').

The Act does not define 'motorised wheelchair' in the Schedule 4 dictionary.

The Act defines 'motor vehicle', as

*'a vehicle propelled by a motor that forms part of the vehicle, and (a) includes a trailer attached to the vehicle; but (b) does not include a motorised scooter, a personal mobility device or a power-assisted bicycle.'*¹

Therefore, if a motorised wheelchair is deemed to fall under 'personal mobility device' as contemplated by subsection (b), it cannot be classified as a 'motor vehicle' for the purposes of the Act and, consequently, cannot be registered as a motor vehicle.

The Act also defines 'vehicle' as including

*'any type of transport that moves on wheels and a hovercraft but does not include a train or tram.'*²

Therefore, a motorised wheelchair would likely fall under this definition and, consequently, could be registered as such. However, as discussed below, it is more desirable for registration to be of a motorised wheelchair, not 'vehicle', because the former can attract free compulsory third party (CTP) insurance, whereas the latter does not.

¹ Sch 4.

² Ibid.

Unlike the Act, the Regulations contain a definition of 'motorised wheelchair'. There, 'motorised wheelchair' is defined as

*a motor vehicle that (a) is designed and built for use by a seated person with mobility difficulties; and (b) is not capable of going faster than 10km/h; and (c) has a tare [unladen weight] of not more than 150kg; and (d) is not propelled by an internal-combustion engine.*³

If a wheelchair meets all of these criteria, the Queensland Government website stipulates that '[t]here are also no transfer, number plate or compulsory third party (CTP) insurance fees'.⁴ However, if a motorised wheelchair fails on at least one of the criteria in the Regulations, then it will not be classified as a motorised wheelchair, and therefore cannot be registered as such. Interestingly, under the Act (not the Regulations), a 'pedestrian' is defined as including '(a) a person in a motorised wheelchair that can not travel over 10km/h'. Therefore, reading the Act and the Regulations in conjunction, as long as a 'motorised wheelchair' under the Regulations does not exceed a speed of 10km/h, the wheelchair user is considered a pedestrian. While neither the Act nor Regulations make it clear, motorised wheelchair users could travel as pedestrians on pavements and the road (the latter, for example, when crossing a pedestrian crossing), provided the wheelchair cannot exceed 10km/h. However, section 10(1) of the Regulations state that a 'person must not use, or permit to be used, a vehicle on a road that is not a registered vehicle'. Therefore, if a motorised wheelchair was to be used on the road but did not meet all elements of the definition in the Regulations, penalties would attach as a result of non-registration. This may mean that the wheelchair would need to be registered as a 'vehicle' (discussed above), pursuant to the Act, and therefore will not attract the free CTP insurance under the current Queensland Government scheme.

The free CTP insurance for registration of a motorised wheelchair is not stipulated in the Act nor the Regulations, but rather appears to be a discretionary matter of policy. Furthermore, the rationale for motorised wheelchairs conforming to the definition in the Regulations appears to serve two practical purposes: (1) differentiating a motorised wheelchair from an ordinary vehicle by placing a cap on the wheelchair's speed limit, and (2) placing a cap on the chair's weight limit to ensure they meet necessary weight limitations on public transport.⁵ Ramps and hoists for public transport can support a total weight of 300 kilograms (which includes weight of occupants and goods).

An obvious issue that arises in respect of these practical limitations is that, for example, a wheelchair's weight limit, whilst it may be relevant to public transport weight requirements, should not affect whether free CTP attaches to registration of that wheelchair.

While an exemption for registration requirements does exist under the Regulations if the wheelchair does not meet the definition of 'motorised wheelchair',⁶ it is extremely limited. It states that a person is exempt from motorised wheelchair registration requirements if the wheelchair is 'used by a person who (a) does not usually reside in Queensland; or (b) has resided in Queensland for 14 days or less'.⁷ If a person does not satisfy either of these criteria, they cannot receive an exemption from registration.

An inquiry with the Department of Transport, revealed that an additional 'special circumstances' exemption does exist. This allows for those using a motorised wheelchair to email the Department, with a letter from a healthcare professional, explaining why an exemption should be granted. While this exemption would prevent wheelchair users from incurring penalties for non-compliance with the Regulations, it does not protect a user from the free CTP insurance that would otherwise attach to a 'motorised wheelchair' as defined under the Regulations. However, as provision for such an exemption is not obvious on the Queensland Government website, nor, we were advised, present in any Act or Regulation, we consider that another approach is necessary.

³ Sch 8.

⁴ 'Register a motorised wheelchair' *Queensland Government* (Web Page, 1 April 2019) <https://www.qld.gov.au/transport/registration/register/wheelchair>.

⁵ 'Wheelchairs and Mobility Scooters: Public Transport and Registration Requirements' *Queensland Government* (PDF) pdf_wheelchairs_mobility_scooters_registration_requirements.pdf.

⁶ s 10(2)(a).

⁷ sch 1, s 6.

After considering the current position in Queensland, we have made the following findings in relation to registration requirements of motorised wheelchairs in other jurisdictions.

3.2 New South Wales

Motorised wheelchairs do not require registration or compulsory third-party insurance in the state of New South Wales.⁸ A motorised wheelchair may be used on a footpath or nature strip provided that it does not have the capacity to travel faster than 10 km/h.⁹ They may also be used on a bicycle path, provided that there are no signs prohibiting their use.¹⁰

3.3 Victoria

Motorised wheelchairs do not require registration or compulsory third-party insurance in the state of Victoria.¹¹ They may however only be used by individuals suffering from an illness or living with a disability or other medical condition.¹² Under the *Road Safety Act 1986 (Vic)* and the *Victorian Road Safety Rules 2017*, the devices must not exceed a speed of 10 km/h or weigh more than 110kg without a passenger or luggage.¹³ Motorised wheelchair users are considered pedestrians under Victorian law, and must therefore follow the same rules as pedestrians as outlined in the regulations.¹⁴

3.4 South Australia

According to s 12A of the *Motor Vehicles Act 1959 (SA)*, motorised wheelchairs are exempt from the state's registration and insurance requirements. For this exemption to apply the following conditions must be met:

- the vehicle must be specifically designed and constructed for the transport of someone with a physical infirmity or disability
- has seating for one person only
- is capable of short low speed journeys only
- has an unladen mass not exceeding 250 kilograms.¹⁵

Users of motorised wheelchairs with an unladen mass of 250 kilograms or more therefore require registration and insurance.¹⁶

3.5 Western Australia

In Western Australia, the term 'motorised wheelchair' encompasses both electric wheelchairs, and wheelchairs powered by petrol or diesel.¹⁷ By law, these vehicles must be designed so as to not exceed a speed of 10 km/h.¹⁸ If they meet this requirement, they are legally categorised as pedestrians and thus do not require registration.¹⁹ However, the Western Australian Department of Transport has indicated that where genuine need is demonstrated, wheelchairs which exceed a speed of 10km/h can be conditionally licensed as a 'motorised wheelchair'.²⁰ A driver's license or compulsory Motor Injury Insurance (MII) is not required to operate motorised wheelchairs in Western Australia.²¹

⁸<https://roadsafety.transport.nsw.gov.au/stayingsafe/pedestrians/motorisedwheelchairs/index.html#:~:text=No%2C%20motorised%20wheelchairs%20do%20not.require%20third%20party%20insurance>

⁹ Ibid

¹⁰ Ibid

¹¹ <https://www.racv.com.au/on-the-road/driving-maintenance/road-safety/road-rules/motorised-mobility-devices.html>

¹² <https://www.racv.com.au/on-the-road/driving-maintenance/road-safety/road-rules/motorised-mobility-devices.html>

¹³ Ibid

¹⁴ Victorian Road Safety Road Rules 2017.

¹⁵ https://www.sa.gov.au/_data/assets/pdf_file/0006/21894/MR294-Motorised-wheel-chairs-12.2021.pdf

¹⁶ Ibid.

¹⁷ <https://www.transport.wa.gov.au/licensing/license-a-motorised-wheelchair.asp>

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

3.6 Northern Territory

The Northern Territory does not require registration, licensing or compulsory third-party insurance for the use of motorised wheelchairs.²² Additionally, the *Motor Accidents (Compensation) Act 1979* (NT) specifies that motorised wheelchairs that are incapable of travelling faster than 10km/h are not defined as a 'motor vehicle'.²³ Drivers of motorised wheelchairs may also be entitled to insurance cover for personal injury claims arising out of road accidents where they are at fault.²⁴ This is available under the Northern Territory's Motor Accidents Compensation Scheme (MACC).²⁵

3.7 Australian Capital Territory

The *Road Transport (Safety and Traffic Management) Regulation 2000* (ACT) provides that a vehicle is exempt from registration requirements if it meets the following requirements:

- Designed to carry a person with a disability that substantially impairs the person's mobility; and
- Cannot travel faster than 10km/h on level ground.²⁶

In the Australian Capital Territory (ACT), persons driving a motorised wheelchair are classified as pedestrians if their wheelchair cannot travel over 10 km/h.²⁷ It is thus apparent that the ACT does not place any weight requirements on patrons.

3.8 Tasmania

In the state of Tasmania, motorised wheelchairs exceeding 10 km/h only need to be registered if they are to be used on public streets (including footpaths).²⁸ These vehicles would be registered as a 'light vehicle' or 'motorcycle' with conditions.²⁹ Motorised wheelchairs which travel below 10 km/h do not need to be registered.³⁰

4. Recommendations

In light of the findings on registration of motorised wheelchairs in Queensland and other Australian jurisdictions, the authors make the following recommendations:

Recommendation 1

Amend the Regulations to allow registration of motorised wheelchairs greater than 150 kilograms (for example, by stipulating a weight limit of 250 kilograms, similar to South Australia) and provide free CTP insurance to all motorised wheelchairs.

Recommendation 2

In the event recommendation 1 cannot be implemented, we then recommend:

Automatic provision of free CTP insurance, regardless of the size of the motorised wheelchair. If the definition of 'motorised wheelchair' in the Regulations cannot be amended, meaning users would have to register their chairs as 'vehicles' under the Act, allow for the provision of free CTP insurance

²² <https://www.letsmovetogether.com.au/wp-content/uploads/2018/09/Senate-Report-2018-Scooter-enquiry.pdf>

²³ Motor accidents (compensation) act 1979 (NT), s4.

²⁴ <https://www.letsmovetogether.com.au/wp-content/uploads/2018/09/Senate-Report-2018-Scooter-enquiry.pdf>

²⁵ <https://www.ntmacc.com.au/who-is-covered>

²⁶ S 21, Road Transport (Vehicle Registration) Regulation 2000

²⁷ Chapter 3, regulations governing use of motorised mobility devices.

²⁸ <https://www.letsmovetogether.com.au/wp-content/uploads/2018/09/Senate-Report-2018-Scooter-enquiry.pdf>

²⁹ Ibid.

³⁰ Ibid.

regardless. While there is clearly a technical distinction between the definition of 'motorised wheelchair' and 'vehicle', practically, free CTP should be provided to anyone using a motorised wheelchair, regardless of size.

Recommendation 3

In the event recommendations 1 or 2 cannot be implemented, we then recommend:

Widening the circumstances for granting an exemption for registration. Instead of having a limited exemption for motorised wheelchair registration, such as that in sch 1, s 6 of the Regulations, the circumstances for granting an exemption should be wider. Alternatively, if it would be too difficult to amend the Regulations to provide for a broader exemption, the Department of Transport should (a) provide clearer communication and instructions on their website as to how to get a 'special circumstances' exemption, and (b) provide details as to eligibility of being granted such an exemption.

Recommendation 4

In the event recommendations 1, 2 or 3 cannot be implemented, we then recommend that:

Motorised wheelchairs should not be subject to registration requirements at all. This is the case in New South Wales and Victoria. If motorised wheelchairs were not subject to registration requirements, then motorised wheelchair users could be classified as 'pedestrians', similar to other jurisdictions, instead of having to register their wheelchairs as 'vehicles'. It should be noted however that in these jurisdictions motorised wheelchair users would not be covered by third party insurance. As a result, patrons who use motorised wheelchairs could be liable in tort law if they injure a fellow pedestrian.



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